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# Representations & Responses

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No. VAT/Clarification-1007/148/Adm-3/B 668

Date : 8-8-2007

To

J. K. Vaghani & Associates, C.A.

C/o. Adhiya & Co. 315, Yusuf Building,

41-43, M. G. Road, Fort, Mumbai – 400 023.

**Sub. : Clarification for applicability of provisions of Section 33D of The Bombay Sales Tax Act to Works Contract Act and Lease Act.**

**Ref. : Your letter dated 17-7-2007**

Gentlemen,

In response to the referred issue whether the provision of section 33D of B.S.T. Act, 1959 is applicable to Works Contract Act and Lease Act it is clarified that –

Section 8 of Maharashtra Sales Tax on the Transfer of Right to use any goods for any purpose Act, 1985; i.e., Lease Act provides that provisions of Bombay Sales Tax Act, 1959 relating to Returns, Assessment, Rectification, Revision ..... etc. shall mutatis-mutandis apply to this Act.

Section 9 of Maharashtra Sales Tax on the Transfer of property in goods involved in the execution of Works Contracts (Re-enacted) Act, 1989; i.e., Works Contract Act provides that the provisions of the B.S.T. Act, 1959 relating to Returns, Assessment, Re-assessment, Rectification shall mutatis-mutandis apply to this Act.

Therefore, with reference to section 8 of the Lease Tax Act and section 9 of Works Contract Act, it is clear that provision of Section 33D of B.S.T. Act, 1959 relating to cancellation of Ex-parte Assessment order is also applicable to Lease Act and Works Contract Act.

Yours faithfully,

(S. D. Bhandare)

Sr. Deputy Commissioner of Sales Tax,  
(Act & Rule) Maharashtra State, Mumbai

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10th August, 2007

The Commissioner of Sales Tax,  
Maharashtra State,  
Room No. 829  
Mumbai – 400 010.

Sir,

**Sub. : Suggestion regarding Registration**

1. It has been observed that when we apply for amendment of a VAT Certificate either due to change in the chief place of business and/or due to opening of an additional place of business, we do not get our TIN Certificate amended immediately and in the meanwhile some buyers may decline to buy goods.

Hence it is suggested that if the Original TIN Certificate is amended manually OR a Print Out of amendment is given to the dealer, it may solve several problems.

I may specify that this procedure of Certificate is being followed in the case of Grant of New TIN Certificates.

2. Secondly, it has been observed that now-a-days there is a great Rush of applicants who apply for P.T. Enrolment and P.T. Registration and looking to the volume of work – the Staff appears to be inadequate and there is delay in grant of certificates – which automatically delays the payment of Taxes.

The Department may take suitable action in the matter.

Thanking You

With warmest regards,

Yours sincerely,

**(MAHABIRPRASAD S. DEORA)**

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Date : - 17-8-2007

To  
Shri Mahabirprasad S. Deora,  
Tax Consultant,  
49, Bhupen Chambers, 2nd Floor,  
9, Dalal Street, Fort, Mumbai – 400 001

**Sub : Suggestion regarding Registration**

Sir,

1. Vide letter dated 10th August, 2007 you have suggested that when dealers applies for amendment of VAT certificates, he should be given a print out of

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amended TIN certificate or manually amended TIN certificate. We have already initiated process of giving freshly printed/amended TIN Certificate. Instructions to this effect has been issued to Dy. Commissioner of (Registration) in Mumbai. Separate utility being made available to registration officials allover Maharashtra for doing the same.

2. Thank you for you suggestion.

Yours sincerely,

**(Santosh Kumar)**

Addl. Commissioner of Sales Tax  
(Registration), Mumbai

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Date : 7-9-2007

Honourable Sir,

We have gone through the XI-format of Form 221 forwarded to our Association. Kindly find our suggestions/ points as under.

1. Conceptually whether only Form 221 is to be e-filed or whether other forms esp. Form 223 is also to be prepared in the given format?
2. It has been tried to fill the format with some figures which seem to be hypothetical. I would suggest that figures from actual data [which may be picked up from the returns already with your Department] should be test checked.

In the given example, please note that sales tax collection and amount payable do not tally. Similar is the position on purchase side.

3. Regarding the format we want to give point wise suggestions:
  - a. Page 1 row 6, reference of alphabet C is to be replaced by alphabet V.
  - b. There has to cross checking about excess collection of tax. In any case, amount as per field 5(b) should equal out to field tax amount at sr. No. 6 or it may be equal to less than [6+6A]
  - c. On purchase side, field 7(m), whether it has to reflect gross amount or net amount is to be decided. Accordingly, one will have to fix formula to accept the figures in fields at table 8.

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- d. MRP based levy of sales tax on medicines is done away with from 1-7-2007. We intend to introduce this form for periods after 1-7-2007. Whether said fields should continue?
- e. In view of the recent amendment to the section 51 wherein refund as per returns/revised return can be adjusted against the dues of the said financial year[ and need not be subsequent period], we feel that description in 10A(b) and 10C(a) require correction. The field may have some blank space for filling reference of the said return.
- f. There arise situations, wherein Vendee deducts TDS even though the transaction is of sale of goods. [Example printed material, rubber stamps/stereos etc.] In such case, even Form 221 calls for column to adjust TDS. This would become much more necessary when we are adopting the concept of e-filing. At present, such adjustments are shown manually in 10A.
- g. There is a peculiar situation about interest in case of revised return. We will try to make it simple with an example. For April 2007 say Rs. 2,00,000 tax was payable which is paid one month late. Interest of Rs. 2,500 is paid with the return.

Now suppose, the said return had to be revised on 21st August 2007 and additional tax of Rs. 40,000 is required to be paid off. On this additional payment, interest of Rs. 1,500 is required to be paid. In this case, while revising return one has to show total interest is Rs. 4,000.

How to reflect this interest is problem as on today. We reiterate that manually somehow it is reported in returns but looking to proposed automation, solution needs to be found out.

Please find enclosed herewith suggestions given by Shri Nitin S. Shah, Managing Committee member regarding e-filing of return.

We are sure that you will take note of this representation. Assuring you of constructive suggestions and co-operation.

Thanking you,

Yours faithfully,

KIRAN G. GARKAR  
VICE PRESIDENT

Encl: Nitin Shah's e-mail

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Respected Nadgauda Madam,

**Sub : Some suggestions for 221; e-return**

I went through the file which you have sent. We checked the programme and there are certain basic mistakes. For your information I am listing a few of them.

1. First return in the case of Newly Registered Dealer. E.g. 15-5-2007 to 30-6-2007

Error is – Period Dates not matched with given periodicity though legally we can file the return accordingly.

2. For each point there must be instructions. (Like Income Tax)
3. Upper Case, Lower Case in Name & Address Lines – no instructions regarding what is accepted.
4. No linkages between point No. 5 & point No. 6 (excess collection is not shown automatically)
5. No Cross checking wherever required.
6. E.g. if purchase amount is 100 and tax collected shown as 1000 still 1000 is accepted as setoff. In short such errors are required to be displayed.
7. There is no formula locking.
8. Amount in fig. should be reflected automatically as amount in words (possible in xls programme)
9. Point No. 7h should be the balancing figure.
10. Same rate of tax is not accepted at point No. 6 more than one time. (It is likely that Purchase is from backward area as well as from non-backward area and rate is 4%)
11. Point No. 10A(b) : Please clarify whether excess credit from last year also is allowed or not. In fact provide for such adjustment in this field, as it is allowed through Circular instructions.

Kind regards,

NITIN SHAH

Pune

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10th September, 2007

Shri Sanjay Bhatia,  
Hon. Commissioner of Sales Tax,  
Maharashtra State,  
Mumbai.

**Sub:Amnesty Scheme for Profession Tax Payers**

**Ref: Finance Dept Gazette dt. 10-8-2007 and Trade Circular  
No.57 T dt. 23-8-2007.**

In continuation of our letter dated 3-9-2007 we would like to invite your kind attention to few further more issues which have been communicated to this Association from various forums.

<b>Sr. No</b>	<b>Issue</b>	<b>Point involved and suggestion, if any</b>
1	<b>Hardship cast on the registered/ enrolled dealers/persons</b>	
	<p>Unenrolled and un Registered Dealers are given immunity from payment of tax for all periods prior to 1-4-2002 Where as the scheme does not give any protection to registered dealers of any sort for tax paid/unpaid prior to 31-3-2002.</p> <p>Existing enrolled dealer is required to find out of his own for which period he is defaulter in the record of PTO. Further he has to trace the old challans, show the same to PTO, see that he takes proper entry in the register, otherwise pay tax again. Calculate interest on it and pay the same to avail benefit of amnesty.</p>	<p>Practically it is very difficult to trace old challans, because payment of tax is done once in a year. Sometimes once in a five year because many dealers prefer to pay lump sum tax. Tracing old challans is a cumbersome task for such dealers.</p> <p>Many dealers/persons may prefer to obtain fresh enrolment to avoid this. If such approach is adopted (though we do not recommend such action in any case), then it will disturb and corrupt the entire data base in your system.</p> <p>We suggest that even for existing dealers immunity be given for all the periods prior to 1-4-2002. If <b>this is not done</b>, then Dept. may at least send courtesy letters to all enrolled dealers. The letter will give idea to the dealers year wise outstanding as on this date.</p>

		This will help the department in updating their data properly. The departmental authorities will be able to spend their valuable time to implementation and administration of scheme more effectively.
2	<b>Calculation of interest</b>	
	In Trade Circular 57T/2007, Para 4.5 <i>Procedure</i> mentions that interest is to be calculated at given rates for the period of delay.	It is noticed that officers invariably levy interest for entire month under the Act. But the amount being small this is never agitated. Example: Even if delay is for 10 months and 5 days, interest for 11 months is wrongly levied. Clear cut instructions may be given to the concerned staff on this aspect. But we fear that due to difference of such calculation and short payment of petty amounts may result in rejection of amnesty. In fact in the letter [on my personal letterhead] filed with your office on 22-8-2007, I have attached clarification received from Commissioner's office on the said issue.
3.	<b>Calculation of penalty</b>	
	In Trade Circular 57T/2007, Para 4.5 <i>Procedure</i> also mentions that penalty shall be calculated from the period from 1-4-2002 onwards and shall be calculated @ Rs. 5/- per each day of delay in case of employers and @ Rs 2/- for each day of delay in case of a person.	G.R. for amnesty scheme has never stated to calculate penalty on one's own. The Circular tries to put additional burden unnecessarily. Kindly note the principle of levying penalty. Like interest, levy of penalty is not automatic. Refer: Trade Circular 11-T/ 2004 dated 8-7-2004, Annex B-Para 14(6) about levy of penalty u/s 36(4A) , (4B) and (4C).

		<p>First show cause notice has to be issued followed by hearing. Thereafter PTO has to apply mind as to facts call for levy of penalty or not. If yes then he has to levy penalty at fixed amount. It is not the case that penalty has to be levied at each and every case.</p> <p>May we point out that earlier amnesty schemes had prescribed payment of 10% of the levied penalty? If not levied until declaration of amnesty then 100% waiver of penalty was given.</p> <p>In the case of URDs who are getting registered now are asked to pay off penalty, even if the same is not levied. If you are of the opinion that G.R. prescribes payment of unlevied penalty, may we request to move the State Government to amend the G.R. to make it more appealing and easy to operate?</p>
4	<b>Short payment of tax</b>	
	<p>The dealer/person has to do lot of calculation on his own and in this exercise, unintended human errors may creep in. Subsequently the authorities may notice that there is short payment. How the dealer will come to know about this? We fear that amnesty benefits may be denied for petty small amounts of Rs. 15/20 also.</p>	<p>Immediately after receipt of application, the applicant should be intimated by an administrative order about the status of his application.</p> <p>In case of short payment he should be asked to make default good within specified period.</p> <p>Such letter/administrative order may be given within 15 days from the receipt of application.</p>
5	<b>Application for amnesty Para 7 of G.R.</b>	
	<p>In this paragraph it is categorically mentioned that, after payment of tax, the eligible</p>	<p>Filing of instant application, when payment is made at the end i.e. 30/31st October may cause a problem. Other wise</p>

	<p>person has to make an application for grant of amnesty. If application is not made then no benefit under this scheme will be granted. The GR &amp; circular is silent as to latest by which date application has to be made?</p>	<p>also latest date for submission of application please be fixed and communicated in advance.</p> <p>The dealer may be allowed to submit its application within one month from the expiry of scheme.</p>
6	<b>Application for amnesty with prescribed authority</b>	
	<p>In the Trade Circular it is mentioned at many a places that application is to be filed with Prescribed authority</p>	<p>Who will be the prescribed authority in case URD obtains number for first time. Registration granting officer or area wise in-charge officer? Please specify to whom application should be made.</p> <p>Recently in Mumbai, locations of PTOs have changed hence a list showing PTO in charge of PIN wise area may be published.</p> <p>If all applications are accepted at one Centralized Centre (e.g. Room No.129 at Mazgaon), then it will be convenient to both authorities as well as dealer.</p>
<b>Withdrawal of appeal and credit of tax paid in appeal</b>		
	<ol style="list-style-type: none"> <li>1. The dealer has to withdraw the appeal, if any to take benefit of amnesty.</li> <li>2. Wherever dealer has filed appeal, he has paid 25% of disputed amount. The question is how he should take credit of this amount. Some clarification is required for uniform stand on this aspect.</li> </ol>	<ol style="list-style-type: none"> <li>1. Firstly, it may be made clear in the Circular as whether attaching acknowledgment of withdrawal letter would suffice or one has to attach order of appellate authority allowing such withdrawal? This clarification would bring uniformity in the administration of scheme and there will be no complaints coming from different sections on this count.</li> <li>2. Earlier the Department had consistently allowed the part payment to be first adjusted against tax, then</li> </ol>

		against interest and penalty, if any. This may be confirmed in Circular.
8	<b>Administratively extended Due Date</b>	
	Refer: Examples: Trade Circular 19T of 2002 dated 28-6-2002 Trade Circular 21T of 2006 dated 19-8-2006	At many a times due date for profession tax was extended from 30th June to later date. This was done through circulars and interest and penalty was protected up to extended date. A chart showing extended due date please be published, which will help authorities and dealer in calculating interest.
9	<b>Intimation about grant of amnesty</b>	
	Trade Circular issued for 'Amnesty scheme 2004' had prescribed along with application form, intimation letter also. Issuance of such letter on grant of amnesty would be of great help. This is more so in view of proposed survey, the Department wishes to undertake November 2007 onwards.	
10	<b>Miscellaneous</b>	
	Following points may also be clarified in the Circular for the benefit of trade: 1. That the dealer can make year wise application and that it is not necessary to opt for block of 5 years from 2002 to 2007. 2. It is noticed that some employers have paid off taxes for employees under PT Enrolment numbers through oversight/ignorance. Now they will obtain new registration numbers. If the fact is pointed out of having paid taxes under enrolment, the credit of the same should be given. Clear instruction will help out claiming amnesty in such cases.	

We will feel obliged if your honour grants us appointment to discuss these issues threadbare.

We assure our every assistance and full co-operation to make this scheme successful and in making it smoothly workable.

Thanking you,

Yours faithfully,

KIRAN G. GARKAR  
For Law & Representation Committee

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To

Shri Pramod P. Surte  
Convenor, Law & Representation Committee,  
8 & 9, Mazgaon Tower, 21 M. P. Road,  
Mazgaon, Mumbai 400 010.

No. DC/Adm-7/PT/2006/28/B-149

Mumbai dt. 17-9-2007

**Sub – Clarification in respect of Amnesty Scheme 2007 under  
Profession Tax Act.**

**Ref – Your letter dt. 3-9-2007.**

Sir,

With reference to the above, a letter in respect of clarification on certain points under Amnesty Scheme 2007 of the Profession Tax Act, 1975 is received from you. The clarification is hereby given, as follows:-

**Para 1 :** The unenrolled persons and unregistered employers have been given immunity from tax for all periods before 1-4-2002. As against this the existing E. C. and R. C. holders have not been given any immunity in tax for earlier periods. This is a totally discriminating treatment between the existing E. C. / R. C. holders & unregistered persons. Therefore the State Government may be recommended to extend the amnesty in tax to existing E. C. & R. C. holders for the periods prior to 1-4-2002.

Reply : The department has communicated the amnesty scheme as per the scheme declared in the Government Resolution No. PFT- 1107/C. A. 16/ Taxation -3 dated 10th August, 2007. The suggestion given by you is being forwarded to Government.

**Para 2 :** (1) The challans for older periods are not available with the F. C. holders as well as with the Profession Tax Officers and no remedy is seen for this situation. (2) If a person wishes to avail benefits of amnesty scheme, then he is required to apply to P. T. O. and obtain the details of unpaid amount of tax along with interest and penalty as per scheme and after obtaining this information, he can opt amnesty scheme. It is therefore suggested to issue courtesy letters to E. C./ R.C. holders giving the details of the balance amount of dues for all the periods and amount payable for amnesty. Therefore eligible person will be in a position to know the balance dues and can avail amnesty under the scheme.

Reply : The person who wishes to avail the benefits of amnesty will have to fulfil the requirements as explained in the Trade Circular. A person who wishes to

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know outstanding dues against him can obtain the information from the respective Profession Tax Officer in charge of his case.

**Para 3 :** In this scheme, it is mentioned that no statutory order will be passed. But it is expected that the department will issue an 'intimation letter' conforming the correctness of benefit of amnesty scheme.

Reply : The department will be issuing an intimation letter in respect of amnesty scheme.

**Para 4 :** It is experienced that no penalties other than simple interest (as a custom or practice) is levied on any of the person for default of late application or return or payment. Similarly these are not automatic, in the sense, opportunity of hearing is required. It would have been proper to collect 10% of the interest instead of penalty. The Government Department still can apply mind on this important issue.

Reply : The payment of 10% of the penalty is a precondition for availing amnesty hence the employers/persons who wish to avail the amnesty will have to work out the amount of interest and penalty at the rates prescribed under the law and pay 10% of it. The rates at which interest/penalty is leviable are given in the Trade Circular No. 57T of 2007 dated 23-8-2007.

**Para 5 :** An employer must get himself registered by applying in Form No. I and pay the tax for the period from 1-4-2002 to 31-7-2007. He should also pay 10% of the amount of interest and penalty for the said period. Amnesty will be available for all tax dues, interest and penalty up to 31-3-2002 and 90% of the interest and penalty from 1-4-2002 to 31-7-2007. (In the scheme the period up to which tax is to be paid is 31-7-2007. But in circular issued by your honour, this period is up to 31-3-2007.)

Reply : The corrigendum in this respect will be issued shortly.

**Para 6 :** If appeal is pending for the period for which amnesty is sought, then it is to be withdrawn unconditionally. As per circular issued not only appeal but also application for revision, application for reference or writ petition should also be withdrawn. It also states that benefits of amnesty granted would be withdrawn, if subsequently an appeal or reference or writ petition is filed and matter is agitated. This seems to be against the amnesty scheme as well as against the constitution.

Reply : Availment of Amnesty is optional. Withdrawal of appeal, which includes revision, reference and writ petition is a prescribed condition for availing the benefits of amnesty.

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**Para 7 :** The payment by E. C. holder for the period 2007-08 has already become due in June 2007. This year also could have been considered under this scheme.

Reply : The scheme is applicable only for the period up to 31-3-2007 as per the Government Resolution.

**Para 8 :** In the circular it is not mentioned that in which challan amount as per amnesty is to be paid. Rules 11, 11A, 11B, and 11C prescribe challan No. III and rule 20 prescribes challan No. VIII for payment of tax for registered persons and enrolled persons respectively. Therefore payments can be made in above challans.

Reply : The payments by employer shall be in Form III and by self employed persons in Form VIII.

**Para 9 :** The Commissioner of Profession Tax has extended due dates for P. T. from time to time for different periods. Therefore, interest and penalty if any shall be applicable from such extended dates. In view of the above, your honour is requested to inform the extended dates by circular.

Reply : The extended dates for the period from 1995 are as under;-

Period	Due Date	Extended Date
2001-02	30-6-2001	31-7-2001
2002-03	30-6-2002	31-7-2002
2006-07	30-6-2006	30-9-2006

The necessary circular will be issued.

**Para 10 :** There are many E. C. holders who have obtained E. C. and paid tax at lower rates instead of paying at higher rate. As per provision of section 5(3) he has to revise E. C. and pay the correct amount at higher rate of tax. If this person wants to opt for amnesty, then he has to get revised E. C. and pay the balance amount with interest and penalty.

Reply : The provisions in this respect are explained in proviso to section 5(3) itself. A person is liable to pay tax at the revised rates irrespective of whether his enrolment certificate is revised or not. It is not necessary to get revised enrolment certificate for availing the benefits of amnesty scheme.

Yours faithfully,  
(SANJAY BHATIA)  
Commissioner of Profession Tax  
Maharashtra State, Mumbai.

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